

PROJECT NAME: _____

CITY COUNCIL APPROVAL

PROJECT NO.: _____

DATE: _____

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
[NAME OF CONSULTANT]**

DRAFT

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and _____ ("Consultant") as of _____, 200__.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on _____, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$ _____ for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to

Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever

incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed (\$). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least

twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after

thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another *claims-made policy form with a retroactive date that precedes the date of this Agreement*, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

- 4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

- 4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

- 4.6 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including

but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

- 8.6.1** Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing

party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it

may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by _____ who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

Any written notice to City shall be sent to:

455 East Calaveras Boulevard
Milpitas, California 95035

- 10.11 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

Charles Lawson, City Manager

[NAME, TITLE]

ATTEST:

Mary Lavelle, City Clerk

Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

APPROVED:

Finance Director/Risk Manager

Document1

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE

Proposal for PatternStream License Budget Implementation Services

October 21, 2005



FINITE MATTERS LTD.

INFORMATION MANAGEMENT SOLUTIONS

Proprietary and Confidential
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Proprietary and Confidential Information Notice

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FINITE MATTERS LTD. makes available and discloses such materials, processes, technical analysis, and data (hereafter Information) as *FINITE MATTERS LTD.* and City of Milpitas mutually agree are necessary and desirable for analysis, review, study, and evaluation of this Proposal. *FINITE MATTERS LTD.* considers this Proposal proprietary and confidential in its entirety.

This proposal is being provided to City of Milpitas and has been prepared by *FINITE MATTERS LTD.* for the sole purpose of assisting the recipient in deciding whether to proceed with a further investigation of the product and services as described by this proposal. By accepting this document, the recipient agrees to keep confidential Information contained herein or made available in connection with any further investigation of the product and services.

Recipient agrees:

- a. To permit Information access only to those personnel engaged in reviewing and evaluating this proposal. The recipient will require personnel to maintain the Information in confidence.
- b. The Information shall at all times remain the property of *FINITE MATTERS LTD.* and shall not be used or disclosed to anyone by recipient without the prior consent of *FINITE MATTERS LTD.*

Notwithstanding the foregoing, this notice shall not apply to Information which:

- a. Is in the public domain.
- b. Is known and can be shown to be known by City of Milpitas before disclosure to recipient by *FINITE MATTERS LTD.*
- c. Becomes part of the public domain by publication or otherwise and is not the result of any unauthorized act or omission on the part of recipient; or
- d. Can be demonstrated to have been supplied to recipient by a third party who is under no obligation to *FINITE MATTERS LTD.* to maintain such Information in confidence.

Any communications or inquiries related to this document should be directed to:

FINITE MATTERS LTD.
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Projections, Forecasts, and Updates

The information set forth in this Proposal is believed by FINITE MATTERS LTD. to be accurate and reliable. It must be recognized, however, that predictions and projections are necessarily subject to a degree of uncertainty and no warranty of such projections is expressed or implied herein.

FINITE MATTERS LTD. reserves the right to amend or replace this document at any time, but undertakes no obligation to update, correct, or supplement any information contained herein or to provide City of Milpitas with access to any additional Information. In no event shall delivery of this document at any date after the date hereof be deemed an indication that there has been no change in FINITE MATTERS LTD. product concept or belief.

This Proposal and associated documentation is available in electronic format for review and analysis upon request. The proposal is available as an Adobe® Systems Incorporated's FrameMaker® or Acrobat® file.

Acronyms and Abbreviations

The following is a list of acronyms and abbreviations used throughout this document. For definitions of these and other terms, refer to the “Glossary” on page 39.

API	Application Programming Interface
BRASS	Budget Reporting Analysis Support System
CIP	Capital Improvement Program
CGI-AMS	CGI - American Management System
FDK	Frame Developer’s Kit
FML	FINITE MATTERS LTD.
GUI	Graphical User Interface
HTML	Hyper Text Markup Language
ODBC	Open Database Connectivity
PB	Performance Budgeting System
PDF	Portable Document Format
PSET	Pattern Set Template
SQL	Standard Query Language
toc	Table of Contents

Executive Summary

FINITE MATTERS LTD. (FML) is pleased to provide this proposal to City of Milpitas for the purpose of implementing an operating budget automated publishing system. FML understands that it is City of Milpitas's goal to establish a world class budget production system that publishes the city and county's budget document from its CGI-AMS BRASS system database and flat files. This Proposal is based on FML's experience, knowledge, review of supplied information, and discussions with CGI-AMS representatives.

FML has successfully provided database publishing system implementation and support to customers. We are no stranger to this type of project and look forward to having the opportunity to meet and *exceed* City of Milpitas's requirements. Currently PatternStream is being implemented and/or used to publish documents for a wide range of customers including:

- Counties of Orange, San Diego, San Mateo, and Santa Clara, California
- Cities of Fort Worth, Texas, Memphis, Tennessee, and New Orleans, Louisiana
- City of Phoenix Transit, Arizona and Golden Gate Bridge, Highway and Transportation District
- Anne Arundel County Public Schools (Maryland), Cuyahoga County, Ohio, Franklin County, Ohio, Howard County, Maryland, and Orange County, Florida
- Department of Commerce — Bureau of Economic Analysis and National Imagery and Mapping Agency (NIMA)
- Department of Defense and Intelligence Community
- Distributors Amcor Sunclipse, Cox Hardware, Hydraulic Supply Company, The McGraw Group, and Tessco Technologies, Inc.
- Financial firms GE Capital Financial Assurance, Massachusetts Financial Services (MFS), and Standard & Poor's
- Manufacturers Honeywell International, Inc., IMI Cornelius, Inc., Nortel Networks, Rockwell Automation, and Sigma-Aldrich
- Non-profit organizations CFA Institute and Mayo Foundation
- Publishers Columbia Books, Inc., Krause Publications, Inc., Leadership Directories, Inc., Money Market Directories, Meister Media Worldwide, and The World Bureau
- States of Connecticut (Judicial Branch), Louisiana, and Missouri

Additional PatternStream client information is available on request. FML is proud of its customer support and services and pleased to present references as requested.

City of Milpitas has asked FML for a proposal to provide budget document publishing project setup services and a PatternStream license. The budget documents include the *Proposed and Final Budgets* and *Department Workbooks*. FML understands that City of Milpitas is responsible for building and/or supplying both source database, flat files, and desired output. This proposal provides pricing on the requested items. City of Milpitas may select any options provided in this pro-

posal — or request additional quotations from FML. The estimated costs for the requested options are:

Task	Price ^a
PatternStream Premier license	\$17,000.00 ^b
Database Publishing Consulting and Support Services	\$155.00 per hour ^c
PatternStream training	\$1,500.00 per day ^d
FrameMaker training	\$1,350.00 per day ^e

a. All prices US dollars.

b. Does not include Adobe® FrameMaker® or Acrobat® Distiller which can be purchased via the CMAS.

c. This price does not include travel or other reasonable expenses.

d. Excludes reasonable travel, lodging, and expenses as applicable.

e. Excludes reasonable travel, lodging, and expenses as applicable.

This price proposal is valid through December 31, 2005. Based on the City of Milpitas' request, the total database publishing consulting and support services that FML will provide will not exceed 200 hours. FML will work with the City of Milpitas to complete the project tasks within the limit. There is a degree of uncertainty for this project is based on budget document and database changes, current data structure understanding, and any unforeseen issues that may arise as the support develops. FML unfortunately can not warrant that all project tasks will be completed within this hour limit. Training services are not included in this amount and are optional.

This document describes FML's proposal for providing the requested services for City of Milpitas and is comprised of four main sections:

1. PatternStream license
2. Proposed consulting services
3. Proposed training services
4. Terms and conditions

FML is a knowledge-age company founded in September, 1991. FML has successfully completed its information management projects for a diverse group of clients. FML maintains active relationships with leading information technology and publishing companies including Adobe Systems Inc., Microsoft Corporation, and Oracle Corporation. FML is headquartered in Goochland, Virginia and has offices in Richmond, Virginia, and Chapel Hill, North Carolina.

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PatternStream License Quotation

QUOTATION BASIS

In this section of the Proposal, FML provides PatternStream license pricing information to City of Milpitas including the purchase price for one PatternStream Runtime license. The purpose for this quotation is to support the City of Milpitas data publishing effort based on FML's understanding of City of Milpitas's needs to publish the *Proposed and Final Budgets and Department Workbooks*.

PatternStream enables publishing information from databases and flat files to electronic file formats for print and electronic distribution. FML suggests this tool is necessary to automate City of Milpitas's publishing process.

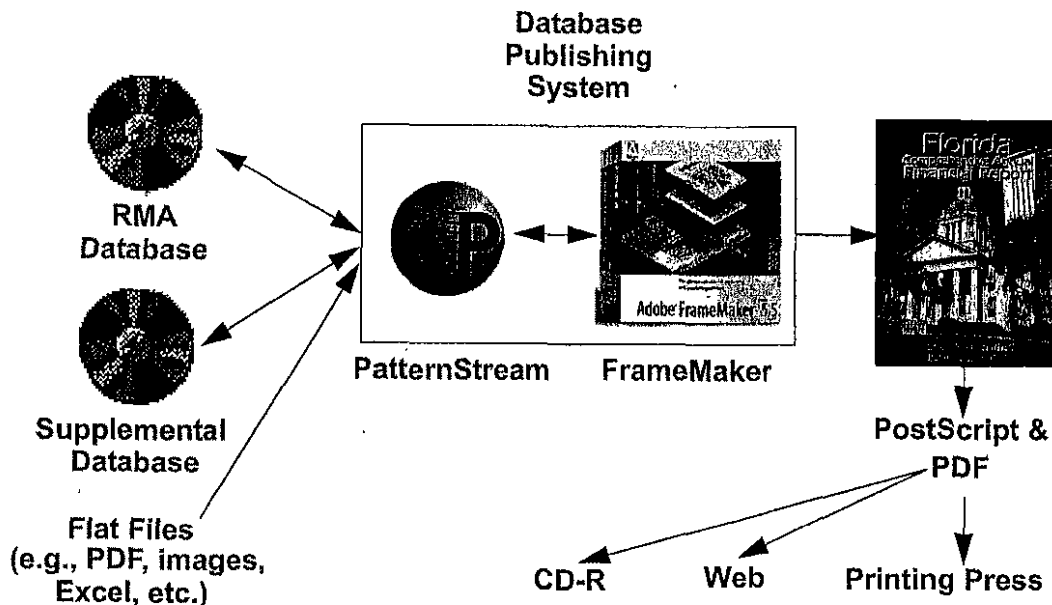
DISCUSSION

PatternStream is used by customers to publish a variety of products including budgets, catalogs, directories, manuals, reference books, and reports. It is used with a variety of database engines and other information to create short and long complex documents.

FML proposes to establish a database publishing system using our PatternStream application. The proposed system is a combination of:

- FML's PatternStream

- Adobe's FrameMaker and/or FrameMaker Server and Acrobat



PatternStream is FML's award winning database publishing application. Used by major customers world-wide, PatternStream has the following benefits:

EASE OF USE

FML's PatternStream graphical user interface will permit ease of use by trained individuals. This will allow City of Milpitas to publish books and presentations using existing personnel resources to satisfy publishing demands. PatternStream enables rapid database publishing project setup and execution. Projects can be developed through an iterative process of creation and publishing.

SPEED

PatternStream will greatly increase the speed of setup and delivery of database publishing projects. Some documents, can be set up within a day's time. Others that have complex queries may require days or in some cases, weeks to set up.

Regarding system publishing speed, various values have been bench marked on computers running Windows NT, 2000, and XP using different processors. However, speed is extremely dependent on document format and hardware attributes. Multi-column intensive documents publish the slowest. Documents containing textual information and images publish the fastest.

All testing indicates that the more powerful the processor and the larger amount of RAM, the faster the publishing process. Using the current generation of Intel microprocessors, a publishing speed of 3 to more than 100 pages per minute can be realized.

AUTOMATION

By using PatternStream, almost any database publishing task can be automated. Because of the system speed, products may be run at any time, including during business hours, or on web servers, if needed.

OTHER BENEFITS

Other benefits that may be realized from PatternStream implementation:

- Multiple output options (PDF, PostScript, HTML, and XML) present important product distribution opportunities (CD and web)
- The system will operate in the Microsoft Windows environment and can operate on Windows NT, 2000, and XP computers — allowing multi-tasking
- The solution is at the forefront of publishing technology
- FML has the proven track record and motivation for product support — enabling the product to improve with time, rather than becoming obsolete

SUPPORT

The PatternStream product provides users and service providers the capability to set up, save, and modify a multitude of different database publishing projects. The product is sold as an off-the-shelf application with:

- CD media
- Documentation
 - Getting Started Guide
 - Quick Start Guide
 - User Manual
- One full year of support which includes:
 - All point and major software releases
 - Twelve phone contacts not to exceed eight hours total
 - Free “bug” fixes which do not count against phone incidents
 - Unlimited email support
 - Documentation updates

FML also provides the following PatternStream support services:

- Optional annual support beyond the first twelve months
- Training
- Publishing project setup
- Custom development

PATTERNSTREAM MAINTENANCE AND SUPPORT

FML provides *optional* annual PatternStream software maintenance. This is provided for customers who want continued PatternStream software support after the first year of license purchase. PatternStream maintenance support does not include PatternStream database publishing project support.

FML and the PatternStream VAR channel offer publishing project setup, consulting, publishing services, and implementation services. Depending on the type of service, projects are quoted on an hourly or fixed price basis.

Some customers employ these services to enable rapid project implementation without the need to utilize internal resources. The services are optional and customers may choose to accomplish these tasks without external resources.

CONDITIONS OF SALE

PatternStream license sales have the following conditions:

1. Prices delineated in this document are subject to change without notice. This price quotation is valid through December 31, 2005.
2. This document does not supersede a signed agreement.
3. PatternStream licenses shall be installed and used in accordance with the license agreement that is included as part of the installation process and included in print with the media.
4. Payment for PatternStream licenses is due in full at time of delivery and invoice. FML will invoice the City of Milpitas upon delivery of PatternStream licenses.
5. Prices do not include applicable taxes. FML is only responsible for the collection and payment of taxes in the Commonwealth of Virginia as applicable.
6. Prices do not include other third party software including Adobe FrameMaker and Acrobat and database software.
7. All prices are in U.S. dollars.

PRICING

PATTERNSTREAM LICENSE VERSIONS

There are two types of PatternStream licenses:

- Premier
- Runtime

The Premier license allows PatternStream database publishing projects to be set up and executed to produce quality digital output for print and electronic distribution. Its graphical user interface enables rapid development and implementation.

The PatternStream Runtime license allows users to execute files set up using a PatternStream Premier license on workstations and servers that have access to the source data-

bases (whether through a network or on the local machine using ODBC) and publish specific documents. The PatternStream runtime license is different from the PatternStream Premier license in that it can not be used for project development. It does not contain the graphical user interface that allows a user to create or modify a publishing file.

PREMIER LICENSES

FML will provide PatternStream Premier version licenses to City of Milpitas for the prices of:

Number of Licenses¹	Price
1	\$17,000.00
2	29,000.00
3	35,000.00
4	42,500.00
5	47,500.00
Each Additional	5,000.00

1. Multiple licenses sales shall be purchased within ninety days of one another to be considered a package.

RUNTIME VERSION LICENSES

FML will provide PatternStream Runtime version licenses to City of Milpitas for the prices of:

Number of PatternStream Runtime Licenses¹	Price
1	\$5,000.00
2	10,000.00
10	47,500.00

1. Multiple licenses sales shall be purchased within ninety days of one another to be considered a package.

Runtime licenses can be modified to perform specialized functions and present custom interfaces. Because mission critical application development times vary, the PatternStream runtime license product may be quoted on a case-by-case basis. Generally, interface modified PatternStream runtime license products range from \$5,000.00 to 22,000.00.

PRICING

To implement the City of Milpitas Proposed and Final Budgets publishing system, FML proposes to sell one Runtime Premier license to the City of Milpitas for a price of \$17,000.

ANNUAL MAINTENANCE

The *optional* annual PatternStream support price is 20 percent of the license package price.

ADDITIONAL INFORMATION

PatternStream Premier and Runtime license bundles are available and quoted on a case-by-case basis.

FML will provide PatternStream license installation services at the rate of \$155.00 per hour, plus reasonable expenses if special travel is required for installation. PatternStream licenses may be installed by City of Milpitas, a vendor, or FML. PatternStream can be installed from CD media or from the PatternStream web site using the industry standard InstallShield developed installer.

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Database Publishing Consulting and Support Services

QUOTATION BASIS

This section of the Proposal suggests FML's services to:

- Work with City of Milpitas to establish and/or verify the *Proposed and Final Budgets* and *Department Workbooks* format and structure
- Develop the FrameMaker template that will properly present the City of Milpitas *Proposed and Final Budgets* and *Department Workbooks* information
- Develop the queries needed to obtain database information to publish the *Proposed and Final Budgets* and *Department Workbooks* from the CGI-AMS BRASS system
- Create and test the PatternStream PSET file and integrate the associated FrameMaker template to publish the City of Milpitas *Proposed and Final Budgets* and *Department Workbooks*
- Publish the complete *Proposed and Final Budgets* with PatternStream including a table of contents and other information

These services will enable FML to implement the *Proposed and Final Budgets* and *Department Workbooks* publishing system for City of Milpitas.

BACKGROUND

Of the twenty-six customers that have purchased PatternStream licenses, FML has provided budget publishing implementation services for eleven of the sites. FML is currently working at two government locations and has seven additional customer sites that are scheduled to have FML services provided. AMS (now CGI-AMS) performed five PatternStream initial setups.

A variety of systems, databases, and other sources of information are used by these customers to formulate their budget and other documents. Agency information systems include:

- AMS EAS
- CGI-AMS BRASS
- CGI-AMS Performance-Based Budgeting (PB)

Databases used in these cases include:

- IBM DB2
- Microsoft Access
- Microsoft SQL Server
- Oracle

Other sources of publishing information include:

- Adobe FrameMaker, PDF, Illustrator
- DeltaGraph
- Microsoft Excel, Word, Visio
- WordPerfect

PatternStream is deployed at more sites than any other application to enable automated budget document publishing. FML has more implementation experience than any other vendor. Since 1999, FML has worked with counties, cities, states, and the federal government to implement systems to publish not only budgets, but also CIP documents, exhibits, CAFR, and other reporting documents. PatternStream has been sold to:

COUNTIES

- City/County of Honolulu, Hawaii
- County of Los Angeles, California
- County of Orange, California
- County of San Diego, California
- County of San Mateo, California
- County of Santa Clara, California
- Cuyahoga County, Ohio
- Franklin County, Ohio

- Howard County, Ohio
- Orange County, Florida
- Westchester County, New York

STATES

- State of Connecticut Judicial Branch
- State of Iowa
- State of Louisiana
- State of Missouri

CITIES

- City of Anaheim, California
- City of Gainesville, Florida
- City of Fort Worth, Texas
- City of Memphis, Tennessee
- City of New Orleans, Louisiana
- City of Richmond, Virginia
- City of Winnipeg, MB Canada

SCHOOL DISTRICTS

- Anne Arundel County, Maryland
- Oakland Intermediate School District
- Philadelphia School District

As shown in the demonstration and by numerous publishing examples, PatternStream has been shown capable of publishing any type of budget and invoking all different types of formatting requirements and rules. To date, PatternStream has met every challenge and exceeded budget office — and information technology expectations.

FEDERAL GOVERNMENT PATTERNSTREAM PUBLISHING

In addition to the state and local government agencies, PatternStream is also used by federal government agencies. The agencies use PatternStream to publish budgets, exhibits, economic reports, aviation reports, and other types of reports and documents.

- Department of Commerce — Bureau of Economic Analysis
- Department of Defense
 - Air Force
 - Air Force Reserve
 - Air National Guard
 - Army

- Army National Guard
- Army Reserves
- Joint Chiefs of Staff
- Intelligence Community
- Royal Australian Air Force (RAAF AIS)

FML provided implementation services to most of the federal government customers. Some services were also provided by other third-parties and the agencies themselves.

PRIVATE SECTOR PATTERNSTREAM PUBLISHING

In addition to being used in the public sector for automated budget and other document publishing, PatternStream is used in the private sector to publish a variety of documents. PatternStream's presence in the private sector markets shows its flexibility and capability.

PatternStream is used by:

- Distributors (e.g., Amcor Sunclipse, Hutton, Hydraulic Supply)
- Financial Services (e.g., MFS, Rainier Group, Standard & Poor's)
- Manufacturers (e.g., Honeywell, Inc., Hy-Capacity Engineering and Manufacturing, Inc., Square D)
- Medical Services (e.g., MediQual)
- Printers (e.g., IPC Communications)
- Publishers (e.g., Krause Publications, Meister Media Worldwide, Money Market Directories [McGraw-Hill])
- Utilities (e.g., Nicor)

PatternStream is used to publish:

- Catalogs
- Directories
- Manuals
- Reports
- Reference books
- Structured documents
- Any pattern-based documents

No other automated or database publishing application that we are aware of has PatternStream's flexibility and wide implementation into so many different publishing markets.

BUDGET PUBLISHING

Why PatternStream for automated budget publishing?

- Rapid setup, deployment, and modification
- Single source and network publishing
- Multiple input source capability

- Publishes complex formats
- Extensible
- FML experience and customer service
- High ROI and best of budget publishing breed

PatternStream is not only used by state and local government customers for budget publishing but by a wide variety of customers that have unique products and publishing expectations. PatternStream's adaptability is another reason why it is the best option when considering database publishing applications.

PatternStream's interface makes project setup, modification, and publishing more efficient than any other application. Budget publishing projects can be set up in far less time than mission critical coding or by using any other known application. Once set up, a budget project can be re-used as often as needed. Changes can be easily made through PatternStream's GUI without the need to call FML.

PatternStream is not a document or content management system. It is a document production system. While certain types of version control can be and have been implemented with PatternStream, and it can be and has been integrated with a document management system, these cases are done on a mission critical basis. PatternStream implements the database publishing method delineated in Patent Number 6,282,539.

Although automated government budget publishing is not a mature or commoditized sector, PatternStream deployment has proven to be far ahead of any application. We believe that this is because PatternStream exceeds the requirements to publish any type of budget document from databases and flat files.

PUBLISHING SUPPORT

City of Milpitas has pragmatically resolved to implement a publishing system to fulfill the following goals:

- Decrease product costs
- Decrease distribution time to customers
- Eliminate publishing process steps
- Distribute customer products electronically
- Decrease internal project resource allocation

Once the PatternStream database publishing system has been purchased, it may be used to publish the City of Milpitas's *Fiscal Year 2006-2007 Proposed and Final Budgets and Department Workbooks*. The budget document will be published using information directly from the CGI-AMS BRASS database and a number of other flat files. To accomplish this, FML will work with City of Milpitas personnel and information. This project will begin with a "kick-off" meeting that will be held either at the City of Milpitas offices or via teleconference.

The first project task will begin with FML replicating the City of Milpitas system for publishing the documents at FML offices. FML will use the flat files and the BRASS database

as the primary source of budget information. FML will visit the City of Milpitas site to:

- Install PatternStream version 2.2, FrameMaker 7.2, and Acrobat Distiller, as necessary
- Setup the directories, files, ODBC, and other environments to enable budget publishing
- Determine *Proposed and Final Budgets* and *Department Workbooks* output requirements
- Start FrameMaker template and PatternStream PSET file development

FML will submit published samples to City of Milpitas for review as the template and PSET files are developed and information published.

FML will supply at least one person to work onsite with City of Milpitas personnel to fully implement the system. The FML representative will ensure that the *Proposed and Final Budgets* and *Department Workbooks* setup is successfully completed.

Two kinds of templates will be used to publish the *Proposed and Final Budgets* and *Department Workbooks* using PatternStream. The PatternStream template, the PSET file, provides the instructions to logically extract database information and publish it into FrameMaker. Different PatternStream PSET files may be used to publish different types of documents, indices, table of contents, and reports. The majority of the FML service time will be used to setup and test the PatternStream template that will enable publishing of the documents. The FrameMaker templates provide the formatting tags and attributes and are integrated into the PatternStream publishing template. FML will setup the FrameMaker template and integrate it with the PatternStream PSET file.

FML will submit published samples to City of Milpitas for review as the implementation process proceeds. FML representatives will ensure that the *Proposed and Final Budgets* and *Department Workbooks* are published in accordance with the City of Milpitas requirements.

PROJECT TIME-LINE ESTIMATES

FML has experience with a range of PatternStream budget publishing projects and therefore project pricing knowledge. For example, we know that it generally will take 200 to 250 hours to implement a CGI-AMS BRASS PatternStream implementation independent of database engine.

FML has reviewed the City of Milpitas budget documents. Although the documents do not initially appear to require many FML personnel hours to set up, we are unsure of all the source information. Based on FML's experience and understanding of this project's tasks, FML believes that it will require no more than 250 hours to support and complete project implementation. This assumes that City of Milpitas personnel will be available to support the publishing, other information development, and review tasks for the *Fiscal Year 2006 Proposed and Final Budgets* and *Department Workbooks*.

Based on the City of Milpitas' request, FML will not spend more than 200 hours on this project. FML will work the City of Milpitas to complete all publishing tasks within this limit by using City resources.

To support implementation of the City of Milpitas *Proposed and Final Budgets* and *Department Workbooks* database publishing system, FML stands ready to provide services. This will allow the system to be implemented and used to satisfy the document publishing deadlines. FML estimates that several site visits will be necessary to complete the project.

FML understands that City of Milpitas schedule for publishing the budget from PatternStream is the middle of January, 2005. FML will fully support this effort to meet the publishing schedule.

DELIVERABLES

FML will provide the following deliverables:

- *Proposed and Final Budgets* and *Department Workbooks* database publishing process support
- PatternStream PSET file and FrameMaker template modification and enhancements

These deliverables will be provided to enable City of Milpitas to publish the *Proposed and Final Budgets* from the City of Milpitas supplied data and information sources.

FML will ensure that the PatternStream PSET file and FrameMaker template publish the *Proposed and Final Budgets* and *Department Workbooks* in the general desired format. Once City of Milpitas accepts this proposal, FML will make changes in accordance with our warranty specified in our terms and conditions and good practice. Other changes to the documents' format and content will be made in accordance with FML's standard hourly rate of \$155.00 per hour as directed by City of Milpitas personnel.

PRICING

FML will provide the deliverables listed in this document for the proposed price of \$155.00 per hour, excluding reasonable travel, lodging, and meal expenses. All reasonable travel, lodging, and meal expenses will be invoiced at cost. FML will invoice City of Milpitas monthly during the *Proposed and Final Budgets* and *Department Workbooks* publishing system setup.

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PatternStream and FrameMaker Training Quotation

QUOTATION BASIS

This Proposal discusses FML's training services for PatternStream and FrameMaker. FML will train City of Milpitas personnel so that they may set up and make changes to their *Proposed and Final Budgets, Department Workbooks*, and to other database publishing projects. This training offering is optional and at the discretion of the City of Milpitas.

DISCUSSION

Since its formation in 1991, FML has provided training to numerous customers nation-wide. Training sessions include FML PatternStream, SQL, and Adobe Acrobat and FrameMaker.

FML is uniquely qualified to conduct training for PatternStream and FrameMaker. FML developed and enhances PatternStream for world-wide customers and has been training personnel since it was released in 1998. Because of FML's long FrameMaker training record and usage, Adobe Certified Expert (ACE) training personnel, and development of PatternStream, customers receive a complete, integrated training experience.

FML offers training near its Chapel Hill and Goochland offices or at a customer's location. FML will provide training at other locations as requested.

DELIVERABLES

FML will provide the following deliverables:

- PatternStream training
- FrameMaker training

FML will provide this training to an unlimited number of City of Milpitas personnel. However, FML does not recommend class sizes of more than 12 people.

PATTERNSTREAM TRAINING

FML will provide three days of PatternStream training to City of Milpitas personnel. This training will cover all the fundamental aspects of database publishing using PatternStream and FrameMaker. The PatternStream training syllabus is presented in the following section.

Training prerequisites include a user knowledge level of FrameMaker and SQL. Training does not include FrameMaker, SQL, or Acrobat training.

FRAMEMAKER TRAINING

FML will provide one to five days of FrameMaker training to City of Milpitas personnel, depending upon needs. FML will customize the course as requested to satisfy the project's personnel requirements based on the Adobe course guidelines. Course customization can include specific publishing instance development and support.

Instruction will be conducted by an Adobe Certified Expert (ACE) instructor or equivalent.

PATTERNSTREAM TRAINING SYLLABUS

The standard three day PatternStream training class addresses:

INTRODUCTION

BASIC PATTERNSTREAM THEORY

Discussion on the basic ideas behind PatternStream and how to think about database publishing in order to use PatternStream effectively.

1. Short discussion of the different kinds of database publishing
 - Forms
 - Data Driven Publishing
 - Data Driven Composition
2. Data Driven Composition - detailed discussion
3. General Architecture of PatternStream

4. The data hierarchy and the layout of data elements on the printed page
 - Simple Directory Example
 - Tabular Data Example
 - Simple Catalog Example
5. The document structure and the elements that comprise a Framemaker document
6. How PatternStream merges these two different hierarchical structures using Pattern Objects and Target Objects.

INTRODUCTION TO PATTERNSTREAM OBJECTS

Provides an overview of the large collection of objects that make up PatternStream.

1. Define the different object classes and a introductory discussion of each one
2. Describe Connection, Query and Variable objects and how they work together to retrieve data from databases
3. Describe in more detail how Pattern objects use Query objects to control the flow of execution
4. Discussion of Target Objects and how they relate to Framemaker objects such as tables and paragraphs
5. The different ways of classifying Target Objects, such as Simple vs. Compound, Text vs. Non-Text, etc.
6. Overview of the different types of target objects and the basics of how they work.
7. How text is generated using String Template objects
8. The different kinds of segments that make up a string template and how they break text into atomic units
9. How the generation of output is controlled in detail using Condition Objects
10. Discuss other object classes, such as Transforms, Extensions and Parameter Lists

TOUR OF THE PATTERNSTREAM USER INTERFACE

Combines a tour of the user interface while utilizing demonstration examples to illustrate the principles discussed.

1. PatternStream menu on the Framemaker menu bar
2. PSet menu on the main PatternStream dialog
3. PatternView
 - Visual Representation of the PSet Hierarchy
 - Object popup menu
 - Object prop dialogs
4. Manipulating standard objects
 - Variables, Queries, Connection, Conditions, Parameter Lists, Extensions
5. Manipulating aggregate objects
6. String Templates, Transforms and Patterns
7. Manipulation Targets

- Pattern Builder Tab
- Target List Tab
- Extensions/Targets Tab
- Pattern View Tab

SIMPLE DIRECTORY EXAMPLE

Constructs a simple directory. Using this example, basic strategies and knowledge needed to use PatternStream effectively are presented such as error handling, successive iteration, developing pset file and Framemaker templates concurrently, analyzing data structure and how it relates to page layout, etc.

CREATING A NEW PSET FILE

1. Discussion of the company database that will be used in the example. (Create Data ODBC data source)
2. Discuss the template file
3. Creates and explores a new pset file
4. Inserting content into the main flow

AREAS COVERED IN EXAMPLE

1. Typical main level pattern
2. Additional first level data
 - use of conditions
 - variable formats
 - character formats in segments
 - complex string templates
3. Using typical subpatterns
4. Using atypical subpatterns
5. Generating running headers

TABULAR DATA

Class constructs a pset file that introduces how tables are handled in PatternStream.

REVIEW OF CREATING A NEW PSET FILE

AREAS COVERED IN EXAMPLE

1. Table Targets
2. Cell Targets
3. Row Targets
4. Manipulating cell attributes
5. Iteration variables
6. Simple transforms
7. Using a vertical dynamic straddle

SIMPLE CATALOG

Class constructs and example that uses multiple invocations of a page target.

REVIEW OF CREATING A NEW PSET FILE

AREAS COVERED IN EXAMPLE

1. A more complex use of tables
2. Creating complex table headings using straddles
3. Using images
4. Subpatterns in cells
5. Generating multiple rows with straddles
6. Using more than one page target

CREATING AN INDEX

Class will create an example that use a previously generated file to construct an index section.

REVIEW OF CREATING A NEW PSET FILE

AREAS COVERED IN EXAMPLE

- Use of markers in the source document
- Use of cross references

REVIEW OF OTHER EXAMPLES

WASHINGTON CHAPTERS EXAMPLE

1. Use of text insets in the Washington Chapters example
2. Use of anchored frames and text frames
3. Creating sliding bleed tabs

CPA COMPANY SECTION

1. Use of anchored frames for icons
2. Tables as a formatting strategy for non-tabular data
3. Addressing large blocks of text

KESTREL HEALTH EXAMPLE

1. Using arrays
2. Using variable tables (type 1)

ADVANCED TOPICS

- Assignment Targets
- Parsing Text Markup
- Execution control targets

- Use of PSet Trees and Call Targets
- Use of Plug-ins
- Use of FrameScript and scripts
- PSet Targets and child pset files
- Continuation Headings (Flows)
- Continuation Headings (Tables)
- Book Targets
- Log Targets
- Flat File Data Sources
- Runtime Library

FUTURE DIRECTIONS

ADDITIONAL FUNCTIONALITY

- Inset targets
- Save targets
- TextLine target
- Condition text

TOTAL DRAG AND DROP UI

DIRECT OUTPUT TO XML

GENERATING CHARTS

PROJECTS WITH MULTIPLE PSET FILES

QUERY DEVELOPMENT TOOLS

MULTIPLE USE OF TARGET OBJECTS

TRAINING CUSTOMIZATION

FML can provide customized PatternStream training to satisfy individual customer needs. This training may include the review and development of a sample project that closely resembles the City of Milpitas documents. Some specialized training sessions may require additional training setup and development costs, depending on the nature of the publishing instance.

PRICING

FML will provide the deliverables listed in this document for the proposed price listed in the following table, excluding reasonable travel, lodging, and meal expenses and training materials. All reasonable travel, lodging, and meal expenses will be invoiced at cost. This price Proposal is valid through December 31, 2005.

FML will invoice for PatternStream and FrameMaker training for the following amounts:

PatternStream training	\$1,500.00 per day ¹
FrameMaker training	\$1,350.00 per day ²

1. Excludes reasonable travel, lodging, and expenses as applicable.

2. Excludes reasonable travel, lodging, and expenses as applicable.

The price quotes are based on training session per day and is not based on the number of students attending class. Multiple students may attend any of the days of training. Training at FML's North Carolina or Virginia sites may incur additional expenses.

The cost of training materials is additional and dependent on the number of students and the detail level of the material.

FML

FINITE
MATTERS
LIMITED

INFORMATION
MANAGEMENT
SOLUTIONS

Quotation Terms and Conditions

DISCUSSION

This section of the Proposal specifies terms and conditions that apply to all specific task quotes. The terms and conditions delineated are FML's standard text and are presented as a basis for agreement development.

FML'S UNDERSTANDING OF CITY OF MILPITAS-SUPPLIED INFORMATION

To accomplish the tasks and provide the deliverables specified by this Proposal, FML assumes that City of Milpitas will provide FML with specific information and project constraints. Inability to or delays in providing these may result in slippage of the promised deliveries and associated costs. To accomplish this effort in a timely manner, FML assumes:

- Timely reviews of iteratively published documents by cognizant City of Milpitas personnel
- Availability of SQL used for all PB reports that may be similar to what is published in the budget documents.
- Able to specify a Word template for documents to be imported (allow style to tag mapping)
- Able to specify Excel file formats

- Availability of City of Milpitas personnel that have a detailed understanding of PB and other budget information sources and the final budget document who can answer technical, formatting, and other budget document questions
- Availability to access PB database directly from off-site locations via high-speed connections.
- There are no exceptions or variations from the PB organizational and fund structure and associated budget data to the method that will be used for the budget documents.
- The only difference between the Proposed and Proposed and Final Budgets will be dollar amounts which will be reflected in PB and a new/revised Section A Word document.
- CPMS document is published into PDF via legacy application and data
- Proposed and Final Budgets information sources are available and as described in conversations between City of Milpitas and FML personnel

TERMS AND CONDITIONS

The following are FML's standard terms and conditions:

1. Warranties

FML will provide the deliverables specified with the degree of skill and care that is required by customarily accepted good and sound professional practices and standards, at the time the work is performed, to ensure all work is correct and appropriate for the purpose intended.

In the event of any error, omission, or other professional negligence, or any breach of the above warranty, the sole and exclusive responsibility of FML will be to re-perform the deficient work at its own expense and FML will have no other liability whatsoever.

FML will not be responsible for any error, omission, or other professional negligence, or any breach of warranty by any other third party software or operating system.

FML will fix errors in customized software and pattern set template files for no charge for 90 days after delivery. FML will fix any PatternStream errors for no charge for 90 days after delivery.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, FML SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE CITY OF MILPITAS FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING OUT OF OR RELATED TO ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOSS OF PROFIT, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF CITY OF MILPITAS OR CITY OF MILPITAS'S AUTHORIZED REPRESENTATIVE HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

2. Schedule Contingencies

Conditions or events beyond the control of FML may jeopardize the proposed performance schedules. FML shall not be responsible for delays in delivery beyond FML's control. Examples of conditions or events beyond FML's control include a change in City of Milpitas personnel working on the project or an inability to access City of Milpitas personnel and information.

3. Indemnity

City of Milpitas hereby undertakes and agrees to indemnify and save harmless FML, its officers, directors and employees, from any and all liability, loss, damage, suits, debts, claims, expenses, etc., whatsoever, arising directly or indirectly from this proposal or any ensuing Agreement including any patent, copyright, trade secret, or trademark infringement claims unless the liability is caused by the negligence of FML.

4. Insurance

FML will maintain, throughout the life of these tasks, insurance that meets or exceeds the limits specified by City of Milpitas with the exception to Professional Liability Insurance.

5. Security

While at City of Milpitas locations, FML employees will comply with the work place rules and regulations established by City of Milpitas.

6. Proprietary Information

FML understands that published products are the property of City of Milpitas. FML and its employees and contractors will not compromise City of Milpitas and customer property rights, intellectual property rights, or non-disclosure policies. City of Milpitas understands that PatternStream and associated technologies and services are proprietary to FML and shall remain proprietary to FML notwithstanding anything to the contrary contained herein.

City of Milpitas and FML will make available and disclose such software, processes, product information, and data (hereafter Information) as the parties mutually agree are necessary and desirable for tests, analysis, review, study, evaluation, development, and completion. Either company may consider portions of the Information proprietary.

Both City of Milpitas and FML agree:

- a. To permit Information access only to those personnel engaged in completing the project. Both companies will require project personnel to maintain the Information in confidence.
- b. The Information shall at all times remain the property of its owner, as the case may be, and shall not be used or disclosed to anyone without the prior consent.

Notwithstanding the foregoing, this Proposal shall not apply to Information which:

- a. Is in the public domain.
- b. Is known and can be shown to be known by the receiving party prior to disclosure.

- c. Becomes part of the public domain by publication or otherwise and is not the result of any unauthorized act or omission on the part of the receiving party; or
- d. Can be demonstrated to have been supplied to the receiving company by a third party who is under no obligation to maintain such Information in confidence.

Neither party as recipient will be liable for disclosure of Information should such disclosure be required by law. In the event that the recipient is requested or becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, the recipient will provide the disclosing party with immediate telephone notice (followed by prompt written notice) so that it may (i) seek a protective order or other appropriate remedy or (ii) waive compliance with the provisions of this Section. In the event that such protective order or other remedy is not obtained, or that the disclosing party waives compliance with the provisions of this Section, the recipient will furnish only that portion of the Information which is legally required and will label such Information as trade secrets, assert the confidentiality thereof, and otherwise exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

It is acknowledged by City of Milpitas that unauthorized copying, transfer or use of PatternStream or unauthorized disclosure of the Information may cause FML irreparable injury that cannot be adequately compensated for by means of monetary damages. It is therefore agreed that any breach of this section by City of Milpitas may be enforced by means of equitable relief (such as, but not necessarily limited to injunctive relief) in addition to any other rights and remedies that may be available.

7. Software License

FML hereby grants to City of Milpitas a non-exclusive, non-transferable single-site right and licenses for use of the PatternStream software to perform database publishing. Such right and license shall continue for an indefinite term, so long as City of Milpitas remains in compliance with all terms and conditions herein. FML shall at all times retain all its right, title and interest in and to the PatternStream software. City of Milpitas agrees not to resell licensed software and to comply with the full terms of the software license accompanying the application.

8. Copyright

FML agrees that any published product resulting from the products or services provided in accordance with this proposal shall be owned exclusively by City of Milpitas.

9. Software Products

City of Milpitas understands that FML is in the software development business and that FML has the right to develop software and publishing products and processes for various industry sectors.

10. Remedies

If City of Milpitas is in default of any payment hereunder or attempts to use, copy, license or convey the items supplied by FML hereunder in a manner contrary to the terms of this Agreement or in competition with FML or in derogation of FML's propri-

etary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, FML shall have, in addition to any other remedies available to it, the right to injunctive relief enjoining such action and the right to revoke the license for FML-supplied software, City of Milpitas hereby acknowledging that other remedies are inadequate.

11. Term

This Proposal is at the will of the parties and may be terminated by either FML or City of Milpitas at any time, with or without cause. In the event of termination of this Proposal prior to completion of the services, City of Milpitas shall be responsible for payment for all services rendered and expenses incurred by FML up to the date of termination.

12. Notice

All notices under this Proposal or any ensuing Agreement shall be in writing and given either in person or by telefax or express overnight service to the address of the party set forth herein (or to such other address as a party may furnish to the other as provided in this sentence), and shall be deemed received on the date of personal delivery, confirmed telefax transmission or receipt (in the case of express overnight service), and if notice is given pursuant to the foregoing to a permitted successor or assign, then notice shall thereafter be given pursuant to the foregoing to such permitted successor or assign.

13. Assignment; Binding Effect

No assignment, transfer or delegation of any rights or obligations under this Proposal or any ensuing Agreement by a party to another shall be made without the prior written consent of all other parties, which consent may be withheld in any party's sole discretion. This Proposal (including these terms and conditions) and any ensuing Agreement shall be binding upon the parties and their respective legal representatives, heirs, devisees, legatees or other successors and assigns, and shall inure to the benefit of the parties and their respective permitted legal representatives, heirs, devisees, legatees or other successors and assigns.

14. Entire Agreement

Any ensuing Agreement, together with this Proposal, constitutes the entire agreement of the parties with respect to its subject matter, supersedes all prior or contemporaneous agreements (written or oral), if any, of the parties with respect to its subject matter, and may not be amended except in writing signed by both parties. In the event of any conflict between the terms of the Proposal and any ensuing Agreement, the terms of the Agreement shall control.

15. No Waiver

The failure of any party at any time or times to require the performance of any provisions of this Proposal (including these terms and conditions) or any ensuing agreement shall in no manner affect the right to enforce the same; and no waiver by any party of any provision (or of a breach of any provision) of this Proposal (including these terms and conditions) or the Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed either as a further or continuing waiver

of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Proposal (including these terms and conditions) or the Agreement.

16. Governing Law

This Proposal (including these terms and conditions) and any ensuing Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia.

17. Severability

It is the intention of all of the parties hereto that each provision of this Proposal (including these terms and conditions) or any ensuing Agreement is severable and, if for any reason any provision is held to be invalid or unenforceable, neither the validity or enforceability of the remaining provisions of the Agreement shall be affected thereby.

18. Payment

FML shall be paid within 30 days of invoice receipt for setup, training, maintenance, and support work. Invoices greater than 30 days old will be assessed an additional late fee of 2.0 percent. Software invoices shall be paid on delivery.

The prices stated in this proposal include all reasonable phone and miscellaneous expenses incurred by FML personnel. These prices do not include any specialty application development, modifications, training, or enhancements beyond what is delineated in this proposal and reasonable travel, lodging, and meal expenses.

FML shall not be responsible for the payment of any local, state, or federal taxes for deliverables outside the Commonwealth of Virginia.

19. Attorneys' Fees

In the event that any party should institute suit for any relief under this proposal or any ensuing Agreement against the other party, the losing party shall pay to the prevailing party all reasonable expenses and court costs, including reasonable attorneys' fees, incurred by the prevailing party, which shall be deemed to have accrued on the date such suit is instituted and shall be enforceable even though such suit is not prosecuted to judgment.

Glossary

Term	Definition
Application Programming Interface (API)	Software libraries that allow a developer the capability to connect external software to an application. Most major off the shelf software programs have APIs that allow the programs to communicate with external applications or have additional features added. As an example, all Adobe Systems Inc. programs (e.g., Photoshop, Illustrator, Acrobat, PageMaker and FrameMaker) have APIs that allow plug-ins to be built, communications with other applications, and database interfaces. An API is sometimes referred to as a software developer's kit (SDK).
Extensible Markup Language (XML)	A standard ASCII based tagged markup language for representing textual information. Like HTML, XML is a subset of standard generalized markup language (SGML [ISO 8879]).
Frame Developer's Kit (FDK)	An API for FrameMaker, FrameMaker+SGML, and FrameViewer software products from Adobe Systems Incorporated. The FDK permits licensees to write applications that work with the Frame product series to perform manual tasks automatically and to add new functions and features.
Hypertext Markup Language (HTML)	The ASCII based tagged language that is used for displaying information through browsers on the WWW. HTML is a subset, or DTD of standard generalized markup language (SGML [ISO 8879]).
International Standards Organizations (ISO)	An international group that establishes world standards.
Mission Critical Application (MCA)	A software program that is written to provide a specific business function. Software written for operation of bank ATMs is an example of an MCA.
Open database connectivity (ODBC)	Microsoft Corporation's software architecture for connecting to a database. ODBC has become an industry standard and adopted by all the major database vendors.
Portable document format (PDF)	A document display and printing standard developed by Adobe Systems Incorporated. The pdf language is a superscript of PostScript and is used by applications such as Acrobat Reader, Exchange, and Capture.

Term	Definition
Pattern Set Template (PST)	A binary file that PatternStream uses to store a database publishing project attributes including the database connection, FrameMaker template information, and project hierarchy.
Structured query language (SQL)	A standard language for accessing information from databases. The language is a standard used by all the major database vendors.

References

1. Automated Regulatory Management System (ARMS), Finite Matters Ltd., 1996
2. Database Publishing with FrameMaker, Frame Technology Corporation, 1992
3. Database Publishing White Paper, Finite Matters Ltd., 1998
4. Database Publishing — Publish in Minutes...Not Days, David V. Evans, Presented to the FrameUsers Conference on October 14, 1998
5. Database Publishing with FrameMaker, Ben Slone, Finite Matters Ltd., Presented to the FrameUsers Conference on October 14, 1998
6. Five FrameMaker Database Publishing Case Studies — 1999, Ben Slone, Finite Matters Ltd., Presented to the FrameUsers Conference on October 15, 1999

Trademarks

FrameViewer, FrameReader, FrameViewer Pro, FrameMaker, FrameMaker+SGML, Frame Developer's Kit (FDK), PostScript, Illustrator, Adobe Type Manager, Adobe logo, Adobe, and Acrobat are registered trademarks of Adobe Systems Incorporated.

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PatternStream implements Patent No. 6,282,539.

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